IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 4TH SEPTEMBER 2007 / 13TH BHADRA 1929

CRP.No. 317 of 2004()

AGAINST THE ORDER DATED 11/12/2003 IN EP 36/02 IN AP.85/2001 of MUNSIFF COURT,MUVATTUPUZHA

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REVN. PETITIONER: 1ST JUDGMENT DEBTOR:

T.T.JOY, S/O. THOMAS,
THEKKUMMOOTTIL HOUSE, NO.V/484, PIRAVOM.

BY ADV. SRI.K.SURENDRA MOHAN

RESPONDENTS: DECREE HOLDER:

M/S. MAHARASHTRA APEX CORPORATION LTD.,
MANIPAL.

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 04/09/2007,THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

CRP No. 317 OF 2004

ORDER ON IA NO.902 OF 2004 IN CRP NO.317 OF 2004

DISMISSED

04.09.2007 SD/- PIUS C. KURIAKOSE, JUDGE.

PIUS C. KURIAKOSE, J.

C.R.P. No. 317 OF 2004

Dated this the 4th day of September, 200

O R D E R

The first judgment debtor in a proceeding for execution of an award passed by the arbitrator is aggrieved by the order of the execution court finding that in spite of sufficient means he has willfully neglected to pay the decree debt. In this Civil Revision Petition under Section 115, the petitioner challenges the above order on various grounds. According to the petitioner, the finding of the execution court is incorrect and is not based on evidence.

Having gone through the impugned order, it is seen that the learned Munsiff had evidence of PW1 to 3 on behalf of the respondent decree holder. Against that evidence the petitioner did not adduce any counter evidence at all. That being the position, it cannot be said that the impugned order is vitiated. However, considering the complaint in the Civil Revision Petition, sufficient opportunity was not given to the petitioner for substantiating his defence that he did not have sufficient means and that he is not liable to be detained in Civil Prison, I am inclined to set aside the impugned order and grant an opportunity to the petitioner but only on conditions. Accordingly, the impugned order will stand set aside on condition that the petitioner pays to the respondent

either directly or through his counsel in the court below, a sum of Rs.7,329/- within six weeks from today. If the court below notices evidence regarding such payment, the court will post the Execution Petition for further enquiry into the question of sufficiency of the petitioner's means and whether he had willfully neglected in the matter of paying the amount. Sufficient opportunity will be afforded by the learned Munsiff to the petitioner for adducing whatever evidences he wants to produce for substantiating his objections to the prayer for arrest. Thereafter, fresh orders will be passed by the learned Munsiff evaluating the entire evidences which come on record. It is made clear that if the condition imposed by this Court is not complied with by the petitioner, the impugned order will stand confirmed and the Civil Revision Petition will be treated as having been dismissed.

PIUS C. KURIAKOSE, JUDGE

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